

FAIR POLITICAL PRACTICES COMMISSION

M E M O R A N D U M

TO: Chairman Getman, Commissioners Deaver, Makel, Scott and Swanson

FROM: Cyrus J. Rickards, Chief, Enforcement Division
Alan Herndon, Chief Investigator
Jon Wroten, Investigator

DATE: November 22, 2000

SUBJECT: MAJOR DONOR PROGRAM - UPDATE

INTRODUCTION

Purpose

At the June 2, 2000 Commission meeting, a presentation was made to the Commission regarding a proposed plan to address Major Donor reporting. The goal of the Major Donor Program is to encourage voluntary compliance with the campaign statement filing requirements for Major Donor Committees. The plan addressed both proactive public outreach and education for Major Donors, with respect to their filing requirements, and enforcement of violations by committees that fail to fulfill their reporting responsibilities as mandated by the Act¹.

Background

The Secretary of State's Office, Political Reform Division (SOS-PRD) compiled a database of all electronically reported contributions received by recipient committees through the first pre-election, second pre-election and late contribution periods, for the March 2000 election (January 1, 2000 through March 6, 2000 inclusive). This database was reviewed by FPPC Enforcement Division staff and refined to exclude committees other than possible Major Donor Committees. There were a total of 583 potential Major Donor Committees identified.

On July 6, 2000, a courtesy notice (attached) was mailed by the Technical Assistance Division (TAD) to each of the 583 identified potential Major Donor Committees informing them of their apparent status as a Major Donor Committee and of their filing responsibilities under the Act.

In late August, 2000, the list of 583 committees that received the TAD courtesy notice was submitted to the SOS-PRD for research. PRD staff compared the list to Major Donor Committees that filed the required statements on, or before July 31, 2000. It was determined by this research that 411 of the identified Major Donor Committees had filed the required Major Donor Statement – Form 461.

¹The 'Act' refers to the Political Reform Act (California Government Code §81000, *et seq.*

This left a remaining 172 potential Major Donor Committee non-filers.

Enforcement staff manually reviewed each SOS Major Donor Committee file and the Automated 'CLAIMS' database at SOS. This research by Enforcement staff identified 44 additional Major Donor Committees that had properly filed their statements; or that were some other form of committee not required to file a Major Donor Statement – Form 461 such as a Political Action Committee. This left 128 identified Major Donor Committees who appeared to not have fulfilled their filing obligations and provided public disclosure of their political campaign activities as required by Government Code §84200(b)². Of this remaining group, it was discovered that 81 of these committees have previously filed Major Donor Statements and have been assigned a SOS-PRD Major Donor identification number.

On October 6, 2000, a letter was mailed to each of the 128 apparent non-filers requesting they complete and return a questionnaire confirming their status as a Major Donor Committee, and if, or when they will file the required Major Donor Statement – Form 461. Eighty responses were received and are categorized as follows.

Total initial contact letters sent		128
Filed on time, or before initial Enforcement contact	40	
Filed immediately upon initial contact	27	
Other – Questions to clarify regarding filing status	13	
Total Responses	80	80
<u>Non-responders</u>		<u>48</u>

On November 22, 2000, a second written contact was made with each Major Donor Committee that had not responded to previous FPPC correspondence. An investigation will be commenced regarding Committees who fail to respond to this contact and file their required Major Donor Statement - Form 461.

Scope

Data from the Secretary of State's Office is limited to data from state level committees, therefore, in its initial stage, this proactive program will be limited to Major Donor Committees contributing to state level committees. Complaints or referrals regarding local Major Donor Committee non-filers, which meet the program's criteria, will be dealt with in the same manner as those cases developed proactively.

² Government Code §84200(b) reads "All committees pursuant to subdivision (b) or (c) of Section 82013 shall file campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31, if they have made contributions or independent expenditures, including payments to a slate mailer organization, during the six-month period before the closing date of the statements."

RECOMMENDATIONS

Item I - Action Requested:

The Commission approve a 'streamlined' process for prosecuting Major Donor Committees that failed to timely file campaign statements and the use of a one-page 'streamlined' Stipulation, Decision, and Order. The form would be similar to that previously approved by the commission for late contribution violations.

Discussion

Due to the volume of potential Major Donor Committee non-filer cases, the staffing required to review, investigate and prosecute the cases, the staffing and resource limitations of the agency, and the continuing expansion of electronic filing which will continue to significantly impact and increase the volume of identified Major Donor Committees and non-filers, it is recommended that the proposed 'streamlined' process be adopted for handling these cases and related issues in a consistent, effective, and judicious manner.

The use of a one-page 'streamlined' Stipulation, Decision, and Order has proved successful in the Commission approved 'streamlined' Late Contribution Program. We believe this approach will be equally successful with respect to major donor violations.

Upon Commission approval, a proposed 'streamlined' Stipulation Decision, and Order will be submitted to the Executive Director for final review and approval.

Item II - Action Requested:

The Commission eliminate the \$49,999 limit on cases being eligible for the 'streamlined' Major Donor prosecution program and direct staff to process all Major Donor non-filing violations under the new program.

Discussion

In the Major Donor program approved by the Commission in September 1999, committees were only eligible to be processed under the program if their contributions totaled less than \$50,000.

We recommend that the Commission remove the \$50,000 contribution limit and authorize the 'streamlined' program for all Major Donor Committees. This approach will simplify resolution of these cases and allow all violators the option of expedient, consistent resolution of cases. Of course, all respondents may opt out of the streamlined program and exercise their rights to the full administrative and civil process.

Item III - Action Requested:

The Commission approve a 'streamlined' fine schedule as follows, which supercedes the previous schedule approved by the Commission on September 10, 1999.

**MAJOR DONOR
STREAMLINED FINE SCHEDULE
PROPOSED
(12-8-00)**

ENFORCEMENT STAGE OF CONTACT	FINE AMOUNT
Committees that file late, but voluntarily upon the Enforcement Division's initial written contact.*	\$200.00
Committees that file late, but voluntarily upon the Enforcement Division's second written contact.**	\$500.00
Committees that do not voluntarily file in response to the FPPC's first or second written contact, but require additional actions by enforcement to obtain compliance with their filing obligations.	15% of dollars contributed up to the statutory maximum per violation. <hr/> 25% of dollars contributed up to the statutory maximum per violation if there is a record of prior enforcement action for the same violation (Gov.Code §84200).

(Relative to the first semi-annual period in 2000; *This is the October 6, 2000 letter, **This is the November 22, 2000 letter)

Discussion

The standardized fine schedule has proved to be successful in the past enforcement prosecutions of both Major Donor and Late Contribution violations. Standardized fines create consistency in the application of penalties for similar violations based on pre-defined evaluation criteria.

The above-proposed standardized fine schedule reflects consideration for timeliness, voluntary compliance and public harm. It additionally provides for increased fines for committees that do not voluntarily cooperate after being placed on notice and complete their filing obligations.

There are enhanced fines for committees that repeatedly fail to comply with or fulfill their filing obligations. This category of violation is seen as a more serious violation and has associated with it greater public harm given the willfulness and continuing nature of the conduct of the committee. The proposed fine assessment is a percentage of the dollars contributed up to the statutory maximum.



FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

July 5, 2000

PLEASE NOTE: THIS LETTER HAS BEEN SENT WITH THE INTENT OF PROVIDING IMPORTANT INFORMATION TO THE GREATEST NUMBER OF PERSONS OR ENTITIES POSSIBLE. PLEASE READ ON FOR VALUABLE INFORMATION REGARDING REPORTING RESPONSIBILITIES YOU MAY HAVE. IF YOU ARE A REGISTERED RECIPIENT COMMITTEE, OR ARE OTHERWISE REGULATED AND ARE ALREADY FILING CAMPAIGN DISCLOSURE STATEMENTS, THEN THIS INFORMATION DOES NOT APPLY TO YOU. PLEASE DISREGARD THIS LETTER AND ACCEPT OUR SINCERE THANKS FOR COMPLYING WITH YOUR TIMELY FILING OBLIGATIONS.

Dear Sir or Madam

We are writing regarding important California filing requirements that may pertain to you. These requirements apply to persons and committees that are considered "major donors" under the Political Reform Act (California Government Code §81000 *et seq.* "The Act").

A major donor is anyone who contributes a combined total of \$10,000 or more to a campaign(s) during a calendar year (Government Code Section 82013, subsection (c)). Major Donors who contribute to state candidates and committees are required to file a major donor form with the California Secretary of State's office along with other local offices by July 31, 2000 (Government Code Section 84200 *et seq.*).

Public records at the Office of the Secretary of State indicate that you have made contributions that total \$10,000 or more during the 2000 calendar year and therefore are required to file a Major Donor Committee Campaign Statement – Form 461 under the Act unless you are qualified and required to file as some other type of committee (i.e. recipient committee).

If these records are correct, please insure your report is filed not later than July 31, 2000. In addition, Major Donors contributing \$100,000 or more between January 1 and June 30 are required to file their reports electronically. If these records are in error and you have not contributed a combined total of \$10,000 or more during 2000, please disregard this letter.

If you have questions regarding your filing requirements under the Act, you may call our Technical Assistance Division at (916) 322-5660. The Form 461 is available on our web site (www.fppc.ca.gov) which also contains helpful information and contacts.

This notice has been sent to you as a courtesy by the FPPC. Thank you for taking time to review this information. Your prompt attention to the July 31 filing deadline will be appreciated as reports filed late can result in an enforcement action and imposition of fines.

Sincerely,

ATTACHMENT

Technical Assistance Division





Attorney at Law

2410 K Street, Suite C

Sacramento, California 95816

Telephone 916-447-2463 Fax 916-447-4944

Prop208@ns.net

December 1, 2000

VIA FAX 916-322-5440

Karen Getman, Chairman
Bill Deaver, Commissioner
Kathleen Makel, Commissioner
Carol Scott, Commissioner
Gordana Swanson, Commissioner

**Re: Meeting of December 8, 2000
Comment Letter
Agenda Item #5
Enforcement Matters-Major Donor Committees**

Dear Chairman Getman and Commissioners:

You and your staff are to be commended for addressing Major Donor reporting with a proactive approach, at least with respect to those individuals and committees involved with state campaigns. This has been facilitated by the electronic filing requirements that apply to major state campaigns although such requirements do not reach most local campaigns.

It is appropriate to address violations of the Major Donor reporting requirements with a "streamlined" process for many of the violations. However, I urge you to reject staff proposals that would slash penalties for violations and remove the existing \$50,000 cap.

As I understand the staff proposal as outlined in the memo dated November 22, 2000, penalties for violations would be reduced to \$200 in the case of first offenders who file after initial notification from the Enforcement Division, regardless of the amount contributed. This would be a dramatic reduction in the penalties approved in September 1999.

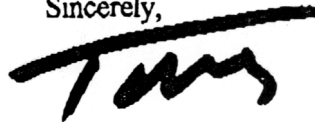
The September 1999 schedule provided for penalties of \$400 for contributions aggregating less than \$25,000 and \$600 for contributions aggregating between \$25,000 and \$49,999. Violations involving contributions aggregating \$50,000 or more are not subject to the "streamlined" process.

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It is debatable whether the September 1999 schedule contains penalties sufficient to encourage compliance. However, these penalties are certainly more appropriate than those currently proposed by staff. Under the current proposal, one could contribute millions of dollars to state and local candidates and measures and risk a penalty of only \$200 by failing to file a Major Donor report. This reduction in penalties is inconsistent with the recent action of the voters reconfirming that they want penalties for violating the Political Reform Act increased, not decreased.

It is respectfully submitted that the current penalty structure for Major Donor reporting violations should be continued without the reductions in penalties or the elimination of the \$50,000 cap.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony', with a long horizontal stroke extending to the right.

TONY MILLER

cc: Cyrus J. Rickards,
Chief, Enforcement Division